

ATTACHMENT 1

Summary of Public Comments to Proposed Rule Revisions with DNR Responses

Legislative Council Rules Clearinghouse comments – not dated

1. Comments: A number of comments and some questions were made regarding: 1) the form, style, and placement of material in administrative rule; and 2) clarity, grammar, punctuation, and use of plain language.

Response: The Department accepted these comments and made minor changes to rule language in response to each of them. In addition to specific comments to correct grammar in rule language, the Clearinghouse suggested the Department correct numerous unspecified instances where the word “which” is used when “that” should be used (Section 5.b of Clearinghouse rule comments 04-113). The Department made some additional changes in response to this suggestion where deemed appropriate to clarify the intent of rule language.

Associated Recyclers of Wisconsin (AROW) – written statement in support submitted by Joe Van Rossum, Director, AROW Board of Directors

2. Comment: AROW and its board of directors support the proposed rule changes contained in this rule package and offer our support for the approval of the rules as presented.

Specific support cited for: (paraphrased by DNR)

NR 502.05(4)(e) - Hauler notification provision. Anecdotal evidence has led DNR and local officials to investigate allegations of service providers advising customers that there is no need to recycle. This provision further emphasizes the notion that everyone in Wisconsin is required to recycle.

NR 502.08(2)(fr) - Construction and Demolition material processors. This provision helps to recognize this waste stream is a resource to be recycled or reused rather than landfilled.

NR 544.03(21) - “Non-residential facilities and properties”. The revision to this definition further clarifies [and] reinforces who is required to comply with Wisconsin’s Recycling Law.

NR 544.04(9g) - Compliance Assurance Plan. The goal of enforcement activities should not be to punish violators, but to gain compliance with recycling laws. The implementation of Compliance Assurance Plans will provide Responsible Units (RU) with systematic procedures for addressing noncompliance cases. In most cases the RU will simply need to put in writing the current methods for addressing complaints regarding recycling law violations.

NR 544.06(2)(b)2 - Tenant notification, dwellings. AROW believes education is an important component of any solid waste management program. In order to maximize recycling activities tenants of rental properties need access to recycling facilities as well as procedures for recycling.

Response: The Department appreciates the support of AROW and thanks their members for their input in the rule revision process.

Waukesha County Environmental Action League (WEAL) - written statement in support submitted by Charlene Lemoine, Waste Issues Representative

3. Comment: WEAL supports revisions to NR 502 stipulating waste haulers notify customers regarding state and local recycling requirements at the time of initial contracts and annually thereafter. WEAL believes haulers have a responsibility to educate customers regarding recycling. The proposed rule modification is a good start, however, additional language should be added to assure waste haulers will not collect and landfill banned materials from commercial generators.

Response: The proposed notification requirement is a general operational requirement for all services providing recycling and solid waste collection and transportation services - licensed haulers not meeting these requirements could be subject to losing their license if found to be in violation of this and other general license requirements listed in NR 502.06(4). In response to this comment, as well as comments from Waste Management Inc., the Department has amended NR 502.06(2)(ar), to clarify that services for the collection and transportation of the materials listed in s. 287.07(4), Stats., from commercial, retail, industrial and government operations are required to provide this notice to their clients.

Conservation and Environmental Sciences Program, University of Wisconsin – written statement in support submitted by Christine Buffington, Program Coordinator

4. Comment: The amendments to NR 502.06(4)(e) and the addition of NR 502.06(4)(em) are good ideas... The changes would require waste haulers to let their customers know that recycling is required by law in Wisconsin... I do think there should be an explanation of measures taken if haulers don't comply.

Response: The proposed notification requirement is a general operational requirement for all services providing recycling and solid waste collection and transportation services. Licensed haulers determined by the Department to be in noncompliance with these and other general license requirements listed in NR 502.06(4) could be subject to having their C&T license revoked.

5. Comment: When a property transaction occurs, I think that realtors, banks/mortgage firms, and/or sellers should inform about the current waste hauler and local recycling requirements.

Response: Responsible units are required under NR 544.04 and 544.06 (2) to provide public information and education about recycling requirements, and to require owners of multiple family dwellings and non-residential facilities to provide recycling facilities at these locations. The Department considers further requirement for notification at the time of property transactions to be within the purview of the individual responsible unit.

Waukesha County Parks & Land Use, Recycling and Solid Waste Division, written statement in support submitted by Meribeth Sullivan, Waukesha County Recycling Specialist.

6. Comment: I am writing this letter as a Waukesha County Recycling Specialist with a business emphasis to express support for the proposed changes to NR 502.06(4)(e). I specifically support the proposal that this section of the code be revised and new language added to read: "...shall notify their clients at the time of contracting for services...the need to comply with recycling requirements consistent with state law and local ordinance."

I can say without hesitation that the majority of businesses in Waukesha County do not recycle. One enforcement agent matched with thousands of businesses poses little concern to owners, and makes business education efforts equally difficult. Aside from lack of responsibility, consider the lack of information. Business owners of strip malls, office buildings, etc. are often from states that have different—or no--recycling laws. Owners need to be informed up front, which also benefits the business. To have

recycling in place initially with in-house and outdoor containers is much easier and far more efficient than being asked to “change course in mid-stream”.

Many business owners call a hauler first for information. They often know only what the hauler tells them. I have numerous examples of businesses telling me that the hauler advised them to just “throw it in the dumpster, and we’ll take care of it”.

Response: The Department appreciates the support of Waukesha County Waukesha County Parks & Land Use, Recycling and Solid Waste Division and thanks their members for their input in the rule revision process. The notification requirement referenced by Ms. Sullivan is included in the final rule revisions.

Wisconsin BeSMART Coalition – written statement in support submitted by Karen Fiedler, Chairperson

7. Comment: I am writing this letter to express my organization’s support for the proposed changes to NR 502.06(4)(e). Specifically we support the proposal that this section of the code be revised and new language added to read: “Services for the collection and transportation of recyclable materials listed in s. 287.07, Stats., shall notify their clients at the time of contracting for services and upon renewal of contracts of the need to comply with recycling requirements consistent with state law and local ordinance.”

As I’m sure you are aware, many of the beverage containers not currently captured for recycling are being disposed of in “away-from-home” Waukesha County Parks & Land Use, Recycling and Solid Waste Division and commercial venues such as resorts, sporting events, festivals, convenience stores, etc where no recycling services are provided. The trend towards more away-from-home consumption presents a significant challenge to the recovery of recyclable materials in the state. Many of the managers of away-from-home venues are simply not aware that the landfill ban requirements include their event or venue. The “hauler notification” provision is critical to increasing the rate of capture of these materials. Recycling service must be included in the bid or price quote for disposal.

This notification provision would not be a significant burden to the haulers. The haulers will simply need to provide information to their customers. DNR has offered to assist haulers by providing sample language which could be included in contracts or added as a bill stuffer or notice.

Response: The Department appreciates the support of the Wisconsin BeSmart Coalition and thanks their members for their input in the rule revision process. The notification requirement referenced by Ms. Fiedler is included in the final rule revisions.

Broydrick & Associates – written statement submitted by Lynn Morgan, Senior Legislative Counsel, representing Waste Management

8. Comment: We strongly support provisions removing barriers to single-stream recycling and changes to the regulatory framework that will boost recycling and efficiency.

Response: The Department appreciates the input of Lynn Morgan in the rule revision process and Waste Management’s support of the proposed revisions, with the exceptions noted in the comments below.

9. Comment: NR 502.06(4)(e) and (em) requiring companies to notify customers of recycling requirements. The language is confusing and should be deleted. The provisions are unlikely to have any effect on the intended audience of alleged recycling scofflaws, who will ignore this rule provision as blithely as they ignore others.

For law-abiding companies, though, the provisions raise many questions. For instance, it is not clear to whom, if anyone, (em) applies since no solid waste collector can operate a service expressly to collect the banned items for disposal. Can a notification be verbal? What is “time of contracting”? Does this provision obligate a hauler holding a municipal contract to contact every generator? Does it apply in cases where there is no written contract? We ask that the notification provisions be removed from the draft rule to allow the Department to work with waste haulers on more effective solutions to the stated problem.

Response: The Department proposes to keep the original intent of the notification provisions but revise wording of NR 502.06(4)(e) and (em) to clarify whom the notification requirement applies to and how this notification must be provided. The Department received only one comment in opposition to the notification requirement contrasted to five written comments voicing strong support for these provisions.

The Department has reworded the notification provisions to address the specific questions raised by Ms. Morgan:

- For instance, it is not clear to whom, if anyone, (em) applies since no solid waste collector can operate a service expressly to collect the banned items for disposal.
Response: The provision applies to all services for the collection and transportation of solid wastes and recyclable materials, including services provided through direct contracting with individual household (single family and 2 to 4 unit dwellings).
- Can a notification be verbal?
Response: The notification must be in writing; an exception is made for service provision to individual households to allow verbal notification at the time services are being arranged, followed by written notification at the time of the first billing and annually thereafter.
- What is “time of contracting”?
Response: The notification must be provided at the time of developing a contract or otherwise arranging for services in instances where there is no written contract.
- Does this provision obligate a hauler holding a municipal contract to contact every generator?
Response: Yes, the notification provisions apply to haulers contracting with local governments, institutions, businesses and other commercial and industrial facilities, as well as individual households in single family and 2 to 4 unit dwellings. Responsible units have informed the Department that some haulers tell their individual household service clients that recycling is not required under individual household service contracts. This notification requirement is intended to clarify that recycling is required of all waste generators and will even the playing field for haulers who are doing the right thing.
- Does it apply in cases where there is no written contract?
Response: The provision is worded to cover cases where there is no written contract.

10. Comment: DNR will gain no new enforcement leverage, because the rule creates no measurable and specific outcome. None of the handful of enforcement dilemmas the Department has cited would have been prevented or solved by these notification provisions.

Response: The enforcement leverage for the proposed revisions is the same as that for other general operational requirements for solid waste collection and transportation services (NR 502.06). Failure to observe these or any of the other general operational requirements could result in the Department’s revoking a license. The Department has added a technical edit to amend NR 502.06(2)(ar) to clarify that

haulers providing collection and transportation service to commercial, industrial and governmental operations shall comply with the notification requirements.

11. Comment: We propose amending MRF requirements under NR 544.16 to reflect the fact that in many cases, the processing center has no direct contract with the responsible unit. Specifically, we suggest the following modifications in Section 50. The changes recognize that haulers often select and contract with materials recovery facilities. In those cases, the hauler, and not the facility, knows where the recyclables originated. MRFs cannot be responsible for reporting to or notifying communities with which they have no direct contractual relationship.

Following is Ms. Morgan's suggested rewording:

NR 544.16 (5) (e) Failure to provide each responsible unit ~~using the~~ that has contracted directly with the materials recovery facility for services with accurate information, as required by a contract with the responsible unit, reflecting the previous calendar year's weights of each recyclable material processed by February 1 of the following year.

NR 544.16 (8) The owner or operator of a materials recovery facility which is self-certified under this section shall provide written notification to the Department and ~~the responsible units~~ it serves that have contracted directly with the facility for services, as follows:

Response: The Department did not intend to revise these provisions as part of the rule revision package.

The changes to NR 544.16(5)(e) suggested by WMI would significantly limit the intended scope of this provision, which is to provide responsible units with the ability to obtain the weights of recyclable materials processed by a MRF without having to rely on their hauler. The Department has anecdotal evidence on the difficulty experienced by some responsible units in obtaining weight information from their hauler, and believes the authority provided in NR 544.16(5)(e) is necessary to ensure that responsible units are able to obtain weight information directly from the materials recovery facility. In response to WMI's comments, we propose the following revisions to clarify the intent of this provision. Because changes in this section occur as repeal and rewrite, the revisions in the text of the rule are not highlighted using strike-out and underline. The revisions will:

- a) Clarify that a request for weight information shall be made by a responsible unit whose recyclable materials were processed by the materials recovery facility.
- b) Modify the timeframe for an information request and the turn around time for providing the information in response to a request. This will allow a responsible unit to make requests at any time during a year, and provide the MRF with adequate turn around time for prepare and submit the requested information. It is our experience that a responsible unit may need weight information during the course of a year, and not solely at the beginning of the year to meet the Department's annual reporting requirements.

The Department concurs with WMI that the notification requirement in NR 544.16(8) is most appropriate in cases where the RU would contract directly with the MRF, and has adopted their suggested rewording.

We Energies – written statement submitted by Kristine M. Krause, Vice President-Environmental,

12. Comment: The proposed NR 500 definition of the term "beneficial use" is not compatible with other rules, and may hinder WDNR's goals for reducing landfill disposal of coal combustion products (CCP) and other industrial byproducts, and preserving land resources. Therefore, in order to be consistent with

the purpose of NR 538 and to be compatible with its definitions, We Energies proposes an alternative to the NR 500.03(19) “beneficial use” term.

Instead of the revisions proposed by the Department:

NR 500.03(19) “Beneficial use or reuse” means the ~~recycling or use of~~ utilization of a solid waste in a productive ~~use~~ manner.

We Energies recommends the following alternative:

NR 500.03(19) “Beneficial use” or “beneficial reuse” means the ~~recycling or use of~~ utilization of a solid waste or industrial byproduct in a productive ~~use~~ manner.

Response: The Department has adopted the revisions proposed by We Energies.

Wisconsin Paper Council – written statement submitted by Edward J. Wilusz, Director, Government Relations

13. Comment: Single-Stream Recycling. It is the experience of the paper industry that single stream programs result in lower quality wastepaper for use by the mills. This, in turn, increases the processing costs for the mills. The State should be working to help lower the cost of production for mills, not increase it. We urge the Department to carefully review single stream programs or proposed programs, to make sure the quality of the wastepaper and other materials is as good as, or better than, other types of programs.

Response: The quality of the recycled material depends on the quality of processing done by the MRF. On some occasions, the Department has observed higher quality recycled paper from single stream MRFs than from traditional MRFs. The Department believes that most effective and efficiently means to manage the quality of material processed by a MRF is through the Department’s MRF self-certification and inspection program. We intend to continue inspections of new single stream MRFs or of MRFs which are transitioning to single-stream collection systems.

14. Comment: The rule changes appear to create some confusion regarding the definition of “reuse”. The definition of “beneficial use or reuse” (NR 500.03(19) refers to the utilization of a solid waste in a productive manner.” However the definition of “reuse” (NR 500.03 (198m) and NR 544.03(37) refers to using a product more than once in its same form or the same or other productive purposes.” We believe that “reuse” should be defined broadly in order to promote this beneficial activity and that the definition of NR 500.03(19) is the appropriate definition to use.

Response: The meaning of “Reuse” when not preceded by “beneficial”, is specific to NR 544, and has been eliminated from NR 500.

15. Comment: Definition of Recycling (NR 544.03(33m). This term should be defined broadly. We are concerned that the proposed definition would exclude certain beneficial activities such as pelletizing of waste material for use as fuel.

Response: Beneficial recycling and reuse activities are more appropriately dealt with under NR 538.10(3), where activities such as combustion of pelletized wood are listed under beneficial reuse activities.

LIST OF COMMENTORS (Abbreviations in parentheses)

Charlene Lemoine, Waste Issues Representative, Waukesha County Environmental Action League (WEAL)

Maribeth Sullivan, Waukesha County Recycling Specialist, Waukesha County Parks & Land Use, Recycling and Solid Waste Division (Waukesha County)

Karen Fiedler, Chairperson, Wisconsin BeSMART Coalition (BeSMART)

Edward J. Wilusz, Director, Government Relations, Wisconsin Paper Council (Paper Council)

Kristine M. Krause, Vice President-Environmental, WE Energies (WEE)

Christina Buffington, Program Coordinator, UWM-Conservation and Environmental Sciences Program (UWM-CES)

Joe Van Rossum, President, Board of Directors, Associated Recyclers of Wisconsin DNR (AROW)

Lynn Morgan, Senior Legislative Counsel, Broydrick & Associates (WMI)